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Assessment of credibility in the context of a Refugee Protection Division
Hearing is not an exact science -- it is the art that makes or breaks a Refugee
claim[FN*]

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Introduction

This paper explores the issue of credibility assessment in the context of Refugee Protection Division (RPD) hearings. Let me begin by saying that in refugee claims credibility is always an issue.[FN1] The majority of refugee claims are determined on the basis of a subjective analysis, whether or not the panel believes the claimant's story.[FN2]

To be a judge or assessor of credibility in the refugee determination process requires interpersonal skills, cultural, gender, religious and racial sensitivity, judgment, thoroughness, a sense of proportionality, fairness and most importantly, compassion.[FN3] The deficit of one or more of these characteristics is sufficient, in my view, for a member to make very inappropriate findings of credibility or life or death decisions that is invariably what refugee determination is about.[FN4]

Moreover, the issue of testing a claimant's credibility, through cross-examination of refugee claimants, is a sore spot with a number of refugee advocates, the premise being that the hearings are non-adversarial and the RPOs are neutral participants. The argument is the testing of credibility by the RPOs through cross-examination of refugee claimants invariably turns the inquisitorial proceedings into an adversarial one. While there is merit to that argument the Court has held that some form of cross-examination is necessary in the refugee determination process.[FN5]

Tools Available to Test Credibility

Assessment of credibility is guided by the provisions of the legislation and by principles that are found in the jurisprudence.[FN6]

Section 170 of the *Immigration and Refugee Protection Act*[FN7] provides that:

The Refugee Protection Division, in any proceeding before it,

(g) is not bound by any legal or technical rules of evidence;

(h) may receive and base a decision on evidence that is adduced in the proceedings and considered credible or trustworthy in the circumstances

In terms of assessment of the credibility of refugee claimants the RPD has resources available to it including the Research Directorate and Refugee Protection Officers (RPO). The Research Directorate prepares "Contextual" and "Human Rights" Packages that are available in the IRB documentation centres nationally.[FN8] These materials are available to counsel, the RPO and members and are used to assist in the assessment of the claimant's credibility and objective basis of a claim. This unit also provides response to information requests from members and RPOs that are not addressed in the general country documents available to the Panel. In addition, the Research Directorate at the request of a RPD Panel can conduct research or request information specific to an individual claimant; this information is protected from public disclosure. The claimant and counsel are aware of the information and the source of the information and can call evidence expert or otherwise to rebut the information, if it is adverse to the claimant. The RPO initiates any of the above requests at the instructions of the member.

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In addition, one of the key roles of RPOs in the refugee determination process is adducing evidence and testing the credibility of the claimant and his or her story. This involves cross-examination (or what the RPD refers to as cross-questioning) of the claimant and witnesses during the hearing to clarify areas of ambiguity, to explore inconsistencies, implausibilities, contradictions and other discrepancies and to otherwise test aspects of the claim and the claimant's credibility to ensure that the Panel has sufficient and reliable information upon which to base a decision.

Members of the Refugee Protection Division make a determination following the conclusion of a hearing, whether there is any credible or trustworthy evidence upon which it can make a determination in favour of the claimant.

Member David Cooke recently commented on the difficulty of testing credibility in refugee hearings:

The role of the Refugee Protection Officer (RPO) is a challenging one. He must attempt to bring to the attention of the panel member everything the panel member should be considering in making his or her decision. This can often be difficult, especially if the panel and the RPO are approaching matters differently.

In this particular matter, the RPO seems to have been convinced early in the process that the claimant was not telling the truth. He set out with considerable diligence to so demonstrate and, undoubtedly, felt he was convincing the panel.

The panel encouraged this approach.

Assessment of credibility is not an exact science. Each assessor brings his or her life experience to the fore in trying to find the truth.

One value of having an RPO partake in proceedings is to allow two different approaches to credibility to be played out.

In this case, the claimant was reduced to tears on more than one occasion. The panel had the luxury of watching the interaction with the RPO and found a young man who did not back down, who was determined in sticking to his story.

One listener, the RPO, rejected that story -- based no doubt, in part, on this particular RPO's life experiences. The panel, on the other hand, is prepared to give the claimant the benefit of the doubt -- again, based on part, on his life experiences.

The RPO demonstrated considerable skill as a cross-examiner.

Only the claimant knows whose conclusion was correct.[\[FN9\]](#)

The Honourable Edward Saunders similarly observed that:

Determining credibility is the most difficult task facing any adjudicator. It is particularly so in refugee claims, where there is often no independent evidence. If the result of a claim comes down to a determination of credibility, is a nightmare for the adjudicator. Whatever the decision, it will be never known with certainty by anyone but the claimant whether the determination was right or wrong. If it is right, there is no problem. If it is wrong, the claimant will be left with either a permanent feeling of injustice or with a triumphant feeling that he or she managed to hoodwinked the panel.
[\[FN10\]](#)

Persistent and vigorous questioning of a claimant is not inconsistent with the impartial nature of the RPD or the function of the RPO where credibility concerns such as inconsistencies, contradictions, implausibilities, demeanour, and delay arise in a proceeding and the claimant is giving vague answers or otherwise is not answering in a forthright manner.[\[FN11\]](#)

General Principles

As noted above, the assessment of credibility is the most difficult of tasks facing any decision maker. In the refugee context it requires a thoughtful, sensitive appreciation for the cultural background of a claimant as well as an understanding of the extraordinary circumstances of a refugee, a person who has left family, friends and the familiarity of home for asylum in a foreign land. Fear has propelled a refugee to escape and that fear remains close and present, particularly throughout a process such as refugee determination, which compels a recounting of the factors that created fear.

Because of this special nature of a refugee claim, credibility assessments must be undertaken with a great abundance of

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caution. Professor Hathaway, urges that two forms of caution be undertaken before inferences are drawn that might discount the sworn testimony of a refugee claimant:

First, the decision maker must be sensitive to the fact that most refugees have lived experiences in their country of origin which give them good reasons to distrust persons in authority. They may thus be less than forthright in their dealings with immigration and other officials, particularly soon after their arrival in an asylum state.

Second, it is critical that a reasonable margin of appreciation be applied to any perceived flaws in the claimant's testimony. A claimant's credibility should not be impugned simply because of vagueness or inconsistencies in recounting peripheral details, since memory failures are experienced by many persons who have been the objects of persecution. Because an understandable anxiety affects most claimants compelled to recount painful facts in a formal and foreign environment, only significant concerns about the plausibility of allegations of direct relevance to the claim should be considered sufficient to counter the presumption that the sworn testimony of the applicant is to be accepted as true.[FN12]

The presumption of truth has been adopted by the Federal Court of Appeal as the basic premise of a claimant's testimony. In *Thind v. Canada (Minister of Employment & Immigration)*[FN13] Heald J., for the Court stated that,

when an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there are reasons to doubt their truthfulness.[FN14]

The *Handbook on Procedures and Criteria for Determining Refugee Status*[FN15] urges that the benefit of the doubt be accorded to refugee claimants once an examiner is satisfied of the claimant's general credibility:

196. It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. . . . Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.

204. The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.

Finally, the Supreme Court of Canada in the landmark case of *Singh v. Canada (Minister of Employment & Immigration)*[FN16] identified the importance of the refugee determination process and the issues at stake when it held that the right to security of the person under section 7 of the *Charter* was engaged in an assessment of a refugee claim. Freedom from the threat of physical punishment or suffering, as well as freedom from such punishment itself, are the matters at stake in a refugee determination procedure, and as such the Court held that an oral hearing is therefore warranted.

The importance of protection from return to a country where fundamental issues of life, liberty and security of the person may be in jeopardy requires an open, fair and generous decision making process, particularly with respect to assessments of credibility and that, as stated above, two premises should be applied. The first is that the claimant's testimony should be presumed to be true and second, the claimant should be given the benefit of the doubt once his general credibility has been accepted.

Specific Principles

In order to assist RPD Panels, the Courts have outlined a number of specific guidelines to be considered when credibility and plausibility are assessed. Although not limited to the following, they include:

- a. The Panel should not engage in an overzealous, microscopic examination of evidence to find instances of contradictions in testimony.[FN17]

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- b. In assessing plausibility the Panel should direct its mind to what a practical and informed person would readily recognize as reasonable in that place and in those conditions.[FN18]
- c. The Federal Court of Appeal, also has pointed out in Orelieu that, "one cannot be satisfied that the evidence is credible or trustworthy, unless satisfied that it is probably so, not just possibly so." [FN19]
- d. The Panel may, of course, draw inferences from the evidence.[FN20] However, where the Panel's inferences are based on common sense or rational perceptions about how a government regime in another country might be expected to act, fairness requires that the claimant be given an opportunity to be informed of and address those inferences.[FN21]
- e. Generally speaking, the Panel is required to raise its concerns at the hearing regarding issues of plausibility in order to allow a claimant an opportunity to explain seeming implausibilities.[FN22]
- f. However, there is another line of authority that holds that the Panel is not required to alert the claimant at the time of the hearing of the possibility of it drawing a negative inference based on implausibility of the claimant's story.[FN23]
- g. When the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact. Thus, a presumption exists that the panel weighed each point of evidence, but there is still a duty, namely that of mentioning important evidence supporting the panel's decision.[FN24]
- h. The Panel must take into account all relevant evidence in its assessment, must not ignore evidence and must acknowledge on the record any relevant evidence and provide reasonable reasons if it chooses to discount it. Failure to apply these principles is a reviewable error of law.[FN25]
- i. Where a claim is rejected on the ground that the claimant lacks credibility, the CRDD must provide reasons for its credibility finding in clear and unmistakable terms.[FN26]

Cultural, Social, Gender and Psychological Factors

The influence of culture, language, social and regional factors are important determinants that play a role in how a claimant or witness testifies and how that testimony is received by the tribunal.[FN27]

In fact, participants in the refugee determination process have to pay particular attention to the fact that the presence of interpreters in the hearing room can have an important effect on the exchange of information between the claimant and the Panel.[FN28] The claimant can be very credible and due to faulty interpretation can come across as incredible, thereby affecting his or her credibility.

One has to be sensitive particularly in cases where the claimant or witness shows manifestations of the battered women syndrome.[FN29] The Supreme Court of Canada in *R. v. Lavallee*[FN30] accepted the existence and impact of the "battered wife syndrome" as a reasonable explanation for a woman's actions in killing her physically abusive husband. In the context of RPD proceedings the IRB has the *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution* June 1996 that is designed to assist members in assessing the fears of battered women. Failure to follow the Guideline in assessing such cases is a reviewable error. This principle was clearly illustrated in *Elezi v. Canada (Minister of Citizenship & Immigration)*[FN31] in which the Court allowed the judicial review because the RPD applied its own experience in assessing the applicant's evidence. The Court found that the RPD should have judged the applicant with detailed knowledge of what to expect from a rape victim generally and thus specifically from her. The applicant is entitled to receive the sensitive and informed hearing the Gender Guidelines speak of and this did not occur warranting the intervention of the Court. The same is true for persons suffering from post-traumatic stress disorder. In *Somakandhan v. Canada (Minister of Citizenship & Immigration)*[FN32] the applicant, a young Tamil from northern Sri Lanka, was unable to testify because he suffers from post-traumatic stress disorder. As a result the RPD decided the case on his PIF only. The RPD discounted the evidence in the PIF that the claimant was persecuted by government authorities in Colombo on the basis that it did not accord with documentary evidence. The RPD acknowledged documentary evidence to the effect that there had been terrible abuses against Tamils in Colombo but noted that they seemed to be exceptions. In the Court's view, it is not possible for the RPD to find that the claimant is not within the exception. The documentary evidence is not sufficient to displace the premise that the claimant is to be believed unless good grounds exist to find otherwise. [FN33]

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Synthesizing the Art and Science of Assessing Credibility

In the determination of this difficult issue, panels do consider whether a claimant's story is plausible. In determining plausibility, panels sometimes look at internet or paper copies of newspaper articles. It also considers the intelligence of the witness and the knowledge the claimant has of the leaders or activities of a particular group to which he or she claim to belong. The Panel considers whether the claimant could have produced documentary evidence to support the facts he or she asserts and whether the claimant's story is contradicted. If yes, does the contradiction touch on a crucial point of the claim? The Panel also considers whether the contradiction has been resolved or adequately explained by a claimant. The Panel also looks at the reasonableness of the claimant's story and whether or not it makes any sense.

Dr. Cohen observes that:

When assessing the credibility of asylum seekers what should we regard as reasonable degrees of error or omission? How many are acceptable? Classes of error may be categorised as: calendar errors, detail differences from one period of detention to another similar one, errors of definition or translation-e.g. soldiers/police/men and numbers of men present during torture, telescoping and expansion of time- frames, omissions of rape and other deeply traumatic incidents. It is possible some of these can be explained by the potential for variability of true memories.[FN34]

Claimants ought to, and are in some cases, given the benefit of the doubt in situations where their story does not appear to be rational. In such cases, panels specifically look at facts including, the claimant or witnesses' "desire to be truthful, their motives, general integrity, general intelligence, relationship or friendship to other parties, opportunity for exact observation, capacity to observe accurately, firmness of memory to carry in the mind the facts as observed, ability to resist the influence, frequently unconscious, to modify recollection, capacity to express what is clearly in the mind, ability to reproduce in the witness-box the facts observed, and demeanour while testifying." [FN35]

CRDD T99-10800, as an example, stands for the proposition that a refugee claim may be accepted even where the testimony of the claimant is at odds with the documentary evidence of the country conditions. Citing the *Handbook on Procedures and Criteria for Determining Refugee Status*, member Cooke further held that, after taking the "integrity and intelligence of the witness" into account and finding the witness evidence to be credible, albeit less than rational, that the claimant ought to be given the benefit of the doubt:

The claimant cannot be particularly criticized for vagueness. There was a certainty in his evidence. It may have been less than rational but this is not the test. . . . The claimant must be given the benefit of the doubt.[FN36]

The preceding discussion and analysis is instructive because it incorporates much of the general and specific principles governing the assessment of credibility and as well, demonstrates the importance of decision-makers listening to the evidence with an open mind, accepting sworn evidence is presumed to be true, taking the personal characteristics and vulnerabilities of the claimants into account and even in instances where the claimant's evidence is either vague or at odds with the documentary evidence the claimant ought to be given the benefit of the doubt.[FN37]

The forgetful witness can sometimes be problematic, but generally the credibility of such witnesses is normally not negatively impacted if the claimant provides a reasonable explanation of the error or omission.

All this is to say that the determination comes down to whether there is any credible or trustworthy evidence upon which to make a finding that the claimant has a well-founded fear of persecution for a Convention reason or is a person in need of protection due to a risk of torture or cruel or unusual treatment or punishment.

Deference from the Court

Because findings of credibility are fact driven, courts accord a high degree of deference to decision-makers who had the opportunity to see and hear the witness:[FN38]

[6] Credibility findings of the Board are entitled to the highest degree of curial deference, and the Court will only set aside credibility decisions, or grant leave for applications for judicial review of credibility findings, in accordance with the criteria outlined above. The Court should not substitute its opinion for that of the Board with respect to credibility or plausibility except in the clearest of cases. For this reason, applicants seeking to set aside credibility findings have a very

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heavy onus to discharge both at the stage of seeking leave, and at the hearing if leave is granted.[FN39]

[para29] In my opinion, the Board is entitled to a great deal of deference with implausibility findings, however, its reasons must indicate why it found the Applicant's testimony to be implausible.[FN40]

[para5] The Court, in conducting judicial review, is deferential to the Board, and will not substitute its decision for that of the Board. But in cases where critical findings of fact and credibility are perverse and without regard for the evidence, the Court must intervene.[FN41]

Conclusion

To be a judge or assessor of credibility in the refugee determination process requires interpersonal skills, cultural, gender, religious and racial sensitivity, judgment, thoroughness, a sense of proportionality, fairness and most importantly, compassion. The deficit of one or more of these characteristics is sufficient, in my view, for a member to make very inappropriate findings of credibility or life or death decisions that is invariably what refugee determination is about.

As already mentioned, inherent to the determination of whether or not a person is a Convention refugee or person in need of protection is the determination of credibility of the claimant and the evidence. Most claims rise or fall on the basis of credibility finding, which in the absence of a palpable or overriding error the court is loath to overturn.

I should note that in coming to a negative credibility finding panels are asked to determine whether a claimant's testimony was unreliable and inaccurate due to the intentional fabrication of his evidence when it appeared to suit his interests to provide another version of the facts. The panel are also asked to consider, if necessary, whether the alleged contradictions, inconsistencies, implausibilities and discrepancies that the RPO or Minister's Representative point out in their representations go to the material aspects of this claim.

Finally, and most importantly, as reiterated throughout this paper, decision-makers are directed to consider the evidence with an open mind, accepting that sworn evidence is presumed to be true. In any event, taking the personal characteristics and vulnerabilities of the claimants into account and even in instances where the claimant's evidence is either vague or at odds with the documentary evidence the claimant ought to be given the benefit of the doubt.

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FN1. *Ayimadu-Antwi v. Canada (Minister of Citizenship & Immigration)* (1995), [1995] F.C.J. No. 1116, 1995 CarswellNat 2545 (Fed. T.D.) *Bains v. Canada (Minister of Employment & Immigration)* (1993), 20 Imm. L.R. (2d) 296 (Fed. T.D.)

FN2. The subjective basis relates to the existence of a fear of persecution in the mind of the claimant. The objective basis requires that there be a valid basis for this fear. A claimant may have a subjective fear that he or she will be persecuted if returned to his or her country, but the fear must be assessed objectively in light of the situation in the claimant's country of nationality to determine whether it is well founded. See *Kwiatkowsky v. Canada (Minister of Manpower & Immigration)*, [1982] 2 S.C.R. 856 (S.C.C.) In *Parada v. Canada (Minister of Citizenship & Immigration)* (1995), [1995] F.C.J. No. 353, 1995 CarswellNat 2158 (Fed. T.D.) the court found that if a claimant testifies that he fears for his life and there is evidence to reasonably support those fears, it is improper for the Division to reject that testimony out of hand without making a negative finding of credibility.

FN3. See, for example, *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817 (S.C.C.) *Yusuf v. Canada (Minister of Employment & Immigration)* (1991), [1992] 1 F.C. 629 (Fed. C.A.) *Siba c. Canada (Ministre de la Citoyenneté & de l'Immigration)* (2001), [2001] F.C.J. No. 1890, 2001 CarswellNat 3000 (Fed. T.D.) *Farkas v. Canada (Minister of Citizenship & Immigration)* (2001), [2001] F.C.J. No. 356, 2001 CarswellNat 504 (Fed. T.D.)

FN4. Notwithstanding, my comments about the various competencies required for refugee board members who makes life or death decisions, there are numerous allegations and reported incidents that cast doubt on the competence and decision-making abilities of some of the appointees to the RPD, even from former RPD members themselves: Colin Freeze

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The unlikely refugee judge Experience in law or international affairs not required of board's political appointees" *The Globe and Mail* (February 18, 2002), A5; Peter Showler "Immigration and Refugee Board doesn't play games" *Ottawa Citizen* (October 09, 2001) A15; Charlie Gillis "Outspoken judge blasts refugee board: 'Infantile' reasoning" *National Post* (April 19, 2001), A4; "Refugee roulette" *The Hamilton Spectator* (April 03, 2002), A06; Lubomyr Luciuk "Board games: A handy guide on how to lie and deceive your way into Canada through a flawed and willing refugee 'screening' system" *Ottawa Citizen* (September 25, 2001), A17; Tonda MacCharles "New refugee hearing ordered for rape victim Woman's credibility, not sex attack, questioned by panel" *The Toronto Star* (November 10, 1998), A6; See also, *Lawal v. Canada (Minister of Employment & Immigration)*, [1991] 2 F.C. 404 (Fed. C.A.) *Sivaguru v. Canada (Minister of Employment & Immigration)*, [1992] 2 F.C. 374 (Fed. C.A.) *Iossifov v. Canada (Minister of Employment & Immigration)* (1993), 71 F.T.R. 28 (Fed. T.D.) *Kumar v. Canada (Minister of Employment & Immigration)* (1987), [1988] 2 F.C. 14 (Fed. C.A.) *Mahendran v. Canada (Minister of Employment & Immigration)* (1991), 14 Imm. L.R. (2d) 30 (Fed. C.A.) leave to appeal refused (1992), 138 N.R. 404 (note) (S.C.C.) *Haque v. Canada (Minister of Citizenship & Immigration)* (2000), 8 Imm. L.R. (3d) 248 (Fed. T.D.) *Atwal v. Canada (Minister of Citizenship & Immigration)* (1998), 157 F.T.R. 258 (Fed. T.D.) *Elemer v. Canada (Minister of Citizenship & Immigration)* (2001), [2001] F.C.J. No. 648, 2001 CarswellNat 1142 (Fed. T.D.)

FN5. See, for example, *Maksudur v. Canada (Minister of Citizenship & Immigration)* (1999), 174 F.T.R. 283 (Fed. T.D.) *Yusuf v. Canada (Minister of Employment & Immigration)* (1991), [1992] 1 F.C. 629 (Fed. C.A.) *De Leon c. Canada (Ministre de la Citoyenneté & de l'Immigration)* (2000), [2000] F.C.J. No. 852, 2000 CarswellNat 1224 (Fed. T.D.) *Neame c. Canada (Ministre de la Citoyenneté & de l'Immigration)* (2000), [2000] F.C.J. No. 378, 2000 CarswellNat 572 (Fed. T.D.)

FN6. Immigration and Refugee Board, Legal Services Branch, *Assessment of Credibility in Claims for Refugee Protection*, June 28, 2002.

FN7. S.C. 2001, c. 27.

FN8. There is a Resource Centre at headquarters, in Ottawa. In addition, there are four Regional Documentation Centres in the IRB's regional and district offices in Calgary, Montreal, Toronto and Vancouver. There is also a Reading Room maintained in Winnipeg.

FN9. CRDD T99-01000, Cooke, July 30, 2002.

FN10. The Honourable Edward Saunders, "Report of the Investigation of a complaint on behalf of the Refugee Lawyers' Association relating to the Conduct of Doctor Jose Sotto, a Member of the Immigration and Refugee Board" March 23, 2001, at 11.

FN11. Immigration and Refugee Board, "Questioning 101: A Training Module for New Refugee Claim Officers" Professional Development Branch, 1999, p. 14.

FN12. See, Professor James Hathaway, *The Law of Refugee Status*, 3.2.2. "Role of Refugee Claimant's Testimony" pp. 84-86.

FN13. (October 27, 1983), Doc. A-538-83, [1983] F.C.J. No. 939 (Fed. C.A.)

FN14. See also, *Maldonado v. Canada (Minister of Employment & Immigration)* (1979), [1980] 2 F.C. 302 (Fed. C.A.) at 305

FN15. Issued by the Office of the United Nations High Commissioner for Refugees, Geneva, January 1992.

FN16. [1985] 1 S.C.R. 177 (S.C.C.)

FN17. *Attakora v. Canada (Minister of Employment & Immigration)* (1989), 99 N.R. 168 (Fed. C.A.)

FN18. *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 (B.C. C.A.)

FN19. *Orelien v. Canada (Minister of Employment & Immigration)* (1991), [1992] 1 F.C. 592 (Fed. C.A.) at 605

FN20. *Giron v. Canada (Minister of Employment & Immigration)* (1992), 143 N.R. 238 (Fed. C.A.) *Frimpong v. Canada (Minister of Employment & Immigration)* (1989), 99 N.R. 164 (Fed. C.A.)

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FN21. *Nkrumah v. Canada (Minister of Employment & Immigration)* (1993), 20 Imm. L.R. (2d) 246 (Fed. T.D.)

FN22. *Kong v. Canada (Minister of Employment & Immigration)* (1994), 23 Imm. L.R. (2d) 179 (Fed. T.D.)

FN23. *Lyman v. Canada (Minister of Citizenship & Immigration)* (2002), [2002] F.C.J. No. 1575, 2002 CarswellNat 3197 (Fed. T.D.)

FN24. *Cepeda-Gutierrez v. Canada (Minister of Citizenship & Immigration)* (1998), 157 F.T.R. 35 (Fed. T.D.)

FN25. *Zheng v. Canada (Minister of Citizenship & Immigration)* (1995), 27 Imm. L.R. (2d) 101 (Fed. T.D.) *Toro v. Canada (Minister of Employment & Immigration)* (1980), [1981] 1 F.C. 652 (Fed. C.A.)

FN26. *Hilo v. Canada (Minister of Employment & Immigration)* (1991), 130 N.R. 236 (Fed. C.A.)

FN27. Kalin, W. "Troubled communication: cross-cultural misunderstandings in the asylum-hearing," (1986), *International Migration Review*, 20(2), 230-241. See, also, Barsky, R.F. *Constructing a productive other: discourse theory and the convention refugee hearing*. Amsterdam: John Benjamins, 1994; Tannen, D. (1984b). The pragmatics of cross-cultural communication. *Applied Linguistics*, 5(3), 189-195.

FN28. *Attakora*, supra note 17.

FN29. See also recent decisions allowing application for Judicial Review: *Dhaliwal v. Canada (Minister of Citizenship & Immigration)*, 2002 FCT 965 (Fed. T.D.) *Emmanuel v. Canada (Minister of Citizenship & Immigration)*, 2002 FCT 865 (Fed. T.D.) *Reginald v. Canada (Minister of Citizenship & Immigration)*, 2002 FCT 568 (Fed. T.D.) *Ferdosi v. Canada (Minister of Citizenship & Immigration)*, 2001 FCT 1203 (Fed. T.D.) *Quaye v. Canada (Minister of Citizenship & Immigration)*, 2001 FCT 518 (Fed. T.D.)

FN30. [1990] 1 S.C.R. 852 (S.C.C.)

FN31. 2003 FCT 210 (Fed. T.D.)

FN32. 2002 FCT 1179 (Fed. T.D.)

FN33. See also, *Ismaylov v. Canada (Minister of Citizenship & Immigration)*, 2002 FCT 30 (Fed. T.D.) in that case the decision was overturned in part because the RPD did not take into account the psychological report that indicated that the claimant was suffering from Post-Traumatic Stress Disorder.

FN34. Juliet Cohen "Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statements Reasonably be Said to Undermine Credibility of Testimony?" *Medico-Legal Journal*, Vol 69(1): 25-34.

FN35. *Assessment of Credibility in Claims for Refugee Protection*, supra note 1, at 9.

FN36. CRDD T99-10800, Cooke, April 12, 2001.

FN37. There is also an opposite and prevailing set of jurisprudence that held that "The 'presumption' that a claimant's sworn testimony is true is always rebuttable, and, in appropriate circumstances, may be rebutted by the failure of the documentary evidence to mention what one would normally expect it to mention." See *Adu v. Canada (Minister of Employment & Immigration)* (1995), [1995] F.C.J. No. 114, 1995 CarswellNat 2559 (Fed. C.A.)

FN38. See *Aguebor v. Canada (Minister of Employment & Immigration)* (1993), 160 N.R. 315 (Fed. C.A.) *Sommariva v. Canada (Minister of Citizenship & Immigration)* (1996), 33 Imm. L.R. (2d) 25 (Fed. T.D.) *Rajaratnam v. Canada (Minister of Employment & Immigration)* (1991), 135 N.R. 300 (Fed. C.A.) *Jama v. Canada (Minister of Citizenship & Immigration)* (1995), 91 F.T.R. 217 (Fed. T.D.) *Brar v. Canada (Minister of Citizenship & Immigration)* (1996), [1996] F.C.J. No. 435, 1996 CarswellNat 473 (Fed. T.D.) See also, *Assessment of Credibility in Claims for Refugee Protection*, Supra note 1, at 8.

FN39. *Mateus v. Canada (Minister of Citizenship & Immigration)*, 2002 FCT 1193 (Fed. T.D.)

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[FN40. *Toor v. Canada \(Minister of Citizenship & Immigration\)* \(2003\), \[2003\] F.C.J. No. 1872, 2003 FC 1473 \(F.C.\)](#)

[FN41. *Mazouni v. Canada \(Minister of Citizenship & Immigration\)* \(2003\), \[2003\] F.C.J. No. 1927, 2003 FC 1519 \(F.C.\)](#)

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